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United States Supreme Court

Supreme Court, U.S.
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October Term, 1971

No. 71 - 5338

CHARLES H. TONSUL and
JOHN LEE IRVING,
Petitioners,

-vs-

STATE OF NEW JERSEY,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT

JOSEPH P. LORDI
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On the Brief

AL MIMEOGRAPHING SERVICE, INC.

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OPINIONS BELOW

The respondent accepts the statement of opinions below as set forth in the *pro se* petition.

JURISDICTION

The respondent opposes the grounds for jurisdiction as set forth in the petition. It is submitted that the decisions of the Appellate Division of the New Jersey Superior Court and the New Jersey Supreme Court were in accordance with the Fourth Amendment and *Vale v. Louisiana*, 399 *U.S.* 30, 90 *S.Ct.* 1969, 26 *L.Ed.* 2*d* 409 (1970). Therefore, none of the reasons advanced by the petitioner are sufficient to warrant this Court granting a writ of certiorari to the Supreme Court of New Jersey.

QUESTION PRESENTED

I. Whether there existed probable cause for the arrest leading to the warrantless search that produced the evidence on which the conviction rests?

CONSTITUTIONAL PROVISIONS INVOLVED

The respondent accepts the statement of constitutional provisions involved as set forth in the *pro se* petition.

STATEMENT

The petitioners were indicted for the unlawful sale of a narcotic drug (heroin) contrary to the provisions of *N.J.S.A.* 24:18–4. Each was sentenced 12 to 15 years in State Prison. Petitioner Tonsul was also convicted of unlawful possession of a narcotic drug (heroin), contrary to the provisions of *N.J.S.A.* 24:18–4, and received a consecutive sentence of 5 to 7 years in State Prison.

Prior to trial, the petitioners' motion to suppress evidence was denied by the Honorable Samuel A. Colarusso, J.C.C. On February 22, 1971, the Appellate Division of the New Jersey Superior Court affirmed petitioners' convictions. Thereafter, on June 1, 1971, the New Jersey Supreme Court denied petitioners' petition for certification.

At the trial, the State introduced testimony by Detective Arthur Gockeler and Detective McKinley Jackson of the Narcotics Squad that they had a stake-out at 66 Mercer Street in Newark. (T19-21). Detective Gockeler testified he observed petitioner John L. Irving talking to various persons near the premises and accepting money from them and then going into No. 66 Mercer Street. Detective Gockeler testified that Irving on occasion tapped on a window and on another occasion called into a window. The two detectives later entered the building and from the second floor landing hid themselves and observed Irving and a woman at the front door of 66 Mercer Street. (T26-27). The female entered the building, tapped on the door and passed money through a crack in the door receiving a small glassine envelope. The female left the building and a short while later the detective followed her. She was arrested and the envelope was confiscated by the officer. (T29-3). The officers returned to 66 Mercer Street, smashed down the first floor apartment door and seized petitioner Charles H. Tonsul inside the apartment. The officers testified that they confiscated a large plastic bag which was found to contain glassine envelopes.

Testimony of the police chemist was introduced regarding the envelopes which were seized from Tonsul and Gertrude Gilliam. The police chemist testified that they were positive for heroin. (T14-10).

REASONS WHY WRIT SHOULD NOT BE GRANTED

POINT I

THE ARREST AND SEIZURE DID NOT VIOLATE PETITIONERS' FOURTH AMENDMENT RIGHTS.

The issue in the case *sub judice* is whether there was probable cause for the arrest leading to the warrantless search that produced the evidence on which the conviction rests.

The general rule in New Jersey is that a peace officer has authority to arrest without a warrant when he has probable cause to believe a crime punishable for more than one year has been committed. *State v. Macuk*, 57 *N.J.* 1, 4 (1970). Probable cause has never been precisely defined. As the New Jersey Supreme Court said in *State v. Davis*, 50 *N.J.* 16, 23-24 (1967), *certiorari* denied in 389 *U.S.* 1054 (1968):

> It is something less than proof needed to convict and something more than a raw, unsupported suspicion. It is a suspicion (or belief) of guilt that is 'well grounded'. *State v. Burnette*, 42 *N.J.* 377, 387 (1964); *State v. Contursi*, 44 *N.J.* 422, 429-430 (1965). The emphasis is upon a practical, realistic view of law enforcement in recognition of the primacy of the individual's right to be safe from attack.
>
> Thus, *Beck v. State of Ohio*, 379 *U.S.* 89, 91, 85 *S.Ct.* 223, 13 *L.Ed.* 2*d* 142, 145 (1964), repeats from *Brinegar v. United States*, 338 *U.S.* 160, 176, 69 *S.Ct.* 1302, 93 *L.Ed.* 1879, 1891 (1949), that the rule of probable cause is 'a practical, nontechnical, conception' designed to afford 'the best compromise that has been found for accommodating * * * often opposing interest,' and that
>
> * * * Requiring more would unduly hamper law enforcement.

Moreover, when the validity of a search rests upon an arrest, the lawfulness of the arrest is to be determined by reference to state law insofar as it is not violative of the Federal Constitution. *Ker v. State of California*, 374 *U.S.* 23, 37, 83 *S.Ct.* 1623, 1632, 10 *L.Ed.* 2*d* 726, 739-41 (1963).

With this guidance, the State submits that the facts *sub judice* lead to the inescapable conclusion that the detectives had probable cause to arrest. Moreover, their forcible entry

was reasonable police action under the circumstances. *Ker, supra; State v. Fair,* 45 *N.J.* 77 (1965). Therefore, since the arrest was legal and took place inside the apartment, the seizure incidental thereto was reasonable police action under the circumstances and did not violate Fourth Amendment rights. *Vale v. Louisiana,* 399 *U.S.* 30, 90 *S.Ct.* 1969, 1971, 26 *L.Ed.* 2*d* 409 (1970); *Chimel v. California,* 395 *U.S.* 752, 89 *S.Ct.* 2034, 23 *L.Ed.* 2*d* 685 (1969). See also *State v. Fair, supra,* and *State v. Allen,* 113 *N.J. Super.* 245 (App. Div. 1970).

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,
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